IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO.151 OF 2004 IN SUIT NO.3633 OF 1995

Mangala Balkrishna Sawant
nee Mangala Anant Surve ..Appellant.

Vs.

M/s.Vijay Pharma ..Respondent.

Mr.Rajesh S. Datar, Advocate for the Appellant.

Ms.J.A.Sanchot i/b.R.V.Govilkar for the Respondent.

CORAM: A.P.SHAH AND S.J.VAZIFDAR, JJ.

DATED: 14TH FEBRUARY, 2005

P.C. :

This is an appeal against a decree passed by the learned single judge in the sum of Rs.127,437.85 and interest on Rs.80,000 at 12% per annum from the date of the suit till realisation. The suit was decreed under the provisions of Order 8 rule 5 read with Order 8 rule 10 of the Code of Civil Procedure. The learned judge proceeded on the basis that the averments in the plaint are deemed to have been admitted in view of the absence of any written statement having been filed by the appellant/defendant.

2. We would normally not have been inclined to interfere in a matter of this nature in view of the absence of a written statement for a number of years. However in the facts and circumstances of the present case we are inclined to set aside the order and to remand the matter for decision on merits.

3. The suit was filed by the respondent/plaintiff against the appellant/defendant who was employed in a clerical position by the plaintiff. The suit was filed to recover the amounts allegedly lent and advanced by the respondent to the appellant. The respondent's case is that a part of the loan was advanced by cheque and the balance by cash. There are allegations of misappropriation of various amounts by the respondent against the appellant. The Appellant has denied at the same and her case is that she was wrongly dismissed from her services. The respondent on the other hand contends that she stopped attending office with a view to avoiding repayment of the said loan.

4. Considering the fact that even earlier there were complaints by the appellant before certain authorities and considering the nature in which the alleged loan was granted by the respondent to the

appellant and the other facts and circumstances of the case, the learned Judge ought, in exercise of his discretion, to have called for evidence from the plaintiff and not proceeded under the provisions of Order 8 rules 5 and 10. We are also inclined to afford the applicant another opportunity of filing her written statement in view of the contentious issues arising in this suit. We however do so only as a matter of indulgence.

5. In the circumstances the impugned judgement is set aside. The appellant is at liberty to file a written statement within four weeks from today. The appellant shall pay to the respondent costs fixed at Rs.2000 within four weeks from today.